

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

UNITED STATES OF AMERICA,

Plaintiff,

and

CASE NO.: 2: 14-CR-00113

JAMES H. EVANS, III,

Defendant.

DEFENDANT'S SENTENCING MEMORANDUM

COMES NOW, the Defendant, James H. Evans, by counsel, Robert B Kuenzel, and submits this Sentencing Memorandum in compliance with the Defendant's previously entered plea agreement.

In consideration of the Presentence Investigation Report submitted by the United States Probation Office on January 15, 2015, and in maintaining compliance with the Defendant's previously entered plea agreement, counsel submits this Sentencing Memorandum.

1. Offense:

- a. James H. Evans entered a guilty plea to violation of 18 U.S.C. §371, Conspiracy to Obtain Money and Property by False Pretenses through Mail Fraud.

2. Plea Agreement:

- a. The Defendant's plea agreement sets forth a Base Offense Level of 6 and an Adjusted Offense Level of 10. *See*, Plea Agreement at ¶11.
- b. In law enforcement debriefings of the Defendant, the Defendant admitted his involvement in the Mountain Laurel kickback scheme; further, the Defendant

timely approached the United States Attorney's Office and submitted to further debriefings.

3. **18 U.S.C. §3553(a) Factors:**

a. "The Court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection."

i. **The nature and circumstances of the offense and the history and characteristics of the defendant:** The Defendant understands the seriousness of his actions; however, his conduct did not involve any violence or any threat of violence. Further, the Defendant points out, and counsel believes the United States would agree, that the Defendant was the *least* among all of the Defendants in the Mountain Laurel scheme.

ii. **The need for the sentence imposed:** The Defendant understands the seriousness of his actions and the potential consequences thereof; yet, the Defendant asserts that society will not be any safer with the Defendant being incarcerated.

iii. **The kinds of sentences available:** The Defendant respectfully moves the Court for a sentence of probation. *See*, Presentence Report at ¶84. In support thereof, the Defendant submits that, as his Adjusted Offense Level is Zone A, a Level 8 with a Criminal History Category of I, a sentence of probation is authorized. *See*, 18 U.S.C. §3583(b)(2); U.S.S.G. §5D1.2(a)(2); 18 U.S.C. §3561(c)(1) (*noting* that the Defendant's Plea Agreement requires payment of Restitution to Arch Coal, thus supporting probation in accordance with 18 U.S.C. §3561(c)(1); and U.S.S.G.

§5B1.1(a)(1).

- iv. **Any pertinent policy statement:**
- v. **The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct:** As stated above in ¶3(a)(i), the Defendant notes, and Defendant's counsel believes the United States would agree, that the Defendant was the *least* among all of the Defendants in the Mountain Laurel scheme. As such,
- vi. **The need to provide restitution to any victims of the offense:** The Defendant's Plea Agreement sets for an agreement for restitution.

CONCLUSION

Based upon the foregoing, the Defendant moves this Honorable Court for an Alternative Sentence in accordance with United States Code 18 U.S.C. §3561(c)(1) and United States Sentencing Guidelines 5B1.1(a)(1) for a sentence of probation.

/s/ Robert B. Kuenzel
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CERTIFICATE OF SERVICE

The undersigned does hereby certify that he has served a true copy of the attached **Defendant's Sentencing Memorandum** upon the person(s) listed below on the 22nd day of January , 2015 , by depositing a true copy of same in the United States Mail, postage prepaid, or via facsimile, or via hand delivery, or via electronic transmission, addressed follows:

**Meredith Thomas
Assistant United States Attorney
P.O. Box 1713
Charleston, WV 25326-1713
304.347.5104 – Facsimile**

/s/ Robert B. Kuenzel
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